IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.43 OF 2006
WITH
CIVIL APPLICATION NO.42 OF 2005
WITH
CIVIL APPLICATION NO.183 OF 2006
WITH
CIVIL APPLICATION NO.232 OF 2006

AND

APPEAL FROM ORDER NO.44 OF 2006
WITH
CIVIL APPLICATION NO.43 OF 2005
WITH
CIVIL APPLICATION NO.184 OF 2006
WITH
CIVIL APPLICATION NO.233 OF 2006

Intercon Real Estate Developers. ..Appellants.

V/s.

M/s.Modern Restaurant & Ors. ..Respondents.

Mr. N.V.Walawalkar, Sr.Advocate with Ms.Sheetal Sampat i/b Vimadalal & Co. for appellant.

Mr.Kishore Jain with Joe Fernandes for Respondent No.1 to 5 Mr. Navin Parikh with Ms.Hetal Parikh for respondent No.6.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 20, 2006.

P.C. :

1. For the reasons dictated in open court, following operative order is issued.

. Appeals as well Civil Applications are dismissed.

. At this stage, counsel for the appellants Intercon prays that operation of this order may not be given effect to and the parties be directed to maintain status quo as of today for a period of four weeks to enable the appellants to take up the matter in appeal. Ordinarily, there would be no difficulty in accepting this request. However, in the present case as is noted earlier, the licence in favour of the Plaintiff Ashar is still subsisting and will last only till 31st July, 2007. The fact that there was no interim relief in favour of the plaintiff Ashar for all this time, does not mean that the position as obtained today should be allowed to continue. For, two courts have already examined the rival contentions. There is no difficulty if the appellants were not to accept the opinion recorded by two courts. But that does not mean that the appellants can ask for stay at the cost of Plaintiff Ashar. Every month's delay, as is the case of the appellants before this Court is loss of income of Rs.3 Lakhs per month. Besides, the Plaintiff Ashar is obliged to pay all the taxes and outgoings in respect of the suit hoarding to the local authority. Accordingly, the appellants may ask for stay but on condition that they will have to compensate the

plaintiff Ashar at the rate of Rs.3 Lakhs per month for the proportionate period for which the stay would operate in the event the proposed appeal before the Apex Court was to be dismissed. When this suggestion was given to the counsel for the appellants, prayer for stay was not pressed. In that case, there is no question of granting any stay or directing the parties to maintain status quo as of today.

. Operative part of the order of this Order passed today be issued under the signature of Sheristedar of this court.